BOOKS AND PERIODICALS.

RESCISSION OF STOCK SUBSCRIPTIONS FRAUDULENTLY PROCURED BY PROMOTER. — The courts have been called upon in a number of instances to decide whether a subscriber to stock of a projected corporation can, after the formation of the corporation and the acceptance of his subscription, rescind the subscription on the ground that it was induced by the fraudulent misrepresentation of the promoter. A non-existing corporation cannot have agents; consequently, as it is thus impossible to attribute the fraud of the promoter to the corporation on grounds of agency, rescission has generally been denied. *Oldham* v. *Mt. Sterling, etc., Co.*, 103 Ky. 529; *St. John's Mfg. Co.* v. *Munger*, 106 Mich. 90; *contra*, *McDermott* v. *Harrison*, 9 N. Y. Supp. 184. However, in an elaborate discussion in one of the recent magazines, it is attempted to present a sound basis for allowing rescission. *Can a Subscriber to Stock of a Corporation not yet Formed Rescind his Subscription on the Ground of Fraud?* By Albert Cabell Ritchie, 36 Am. L. Rev. 855 (Nov.–Dec., 1902).

Judge Ritchie contends that rescission should be allowed on the same grounds as those on which a corporation which, after its formation, knowingly accepts property or services contracted for by a promoter, is required to make payment. As to the basis of this latter liability, there has been a wide diversity of opinion. See 14 HARV. L. REV. 536 and 36 Am. L. Reg. N. S. 609. The author, however, does not examine the true principles which underlie the decisions. He contents himself with the broad assertion that in these cases the corporation cannot separate the burden from the benefit, and argues that similarly a corporation should not be allowed to separate the burden from the benefit, that is, to deny the possibility of rescission, in cases where subscriptions have been procured by a promoter's fraud. But generalities of this nature do not go far in the solution of technical legal difficulties. There can be nothing fundamentally common between the two classes of cases. In one of them a corporation is required to pay for property or services contracted for by a promoter which it accepts with knowledge; in the other it is sought to attribute to the corporation the promoter's fraudulent misrepresentations regardless of the corporation's knowledge.

As to the legal relation between a subscriber to stock in a non-existing corporation and the corporation when formed, it seems generally to be agreed that a subscription is a revocable offer by the subscriber, which becomes a binding contract on acceptance by the corporation, the mere organization of the corporation being sufficient to constitute an acceptance in some jurisdictions, while in others a further and formal act by the company is required. *Athol Music Hall Co.* v. *Carey*, 116 Mass. 477; *Badger Paper Co.* v. *Rose*, 95 Wis. 145; *Miller* v. *The Wild Cat, etc., Co.*, 52 Ind. 51. No court has gone so far as to hold that if malicious C by fraudulent misrepresentations induces A to offer his house for sale to B, between whom and C no agency relation exists, and B innocently accepts the offer, A can rescind because of C's fraud. This appears to be exactly the situation in the cases under discussion.

The possibility of an interesting distinction is suggested by the holdings of the English cases, where it appears that rescission is allowed if the corporation at the time of the acceptance of the subscription had knowledge of the fraud, but not otherwise. *In Re Metropolitan, etc., Assn.*, [1892] 3 Ch. 1; *In Re Metal Constituents, Ltd.*, [1902] 1 Ch. 707. On broad principles of contract and equity it seems that one who accepts a fraudulently induced offer with knowledge of the fraud should not be permitted to avail himself of the contract. *Law* v. *Grant*, 37 Wis. 548. The distinction can be of little practical importance, however, as in those jurisdictions where mere incorporation constitutes acceptance, it is impossible to attribute knowledge to the corporation; and in those jurisdictions where actual acceptance is required, it is unlikely that the corporation will have knowledge.